LONG DISTANCE INC.

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FEDERAL COMMUNICATIONS COMMISSION
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December 11, 1992

Ms. Donna Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Comments of U.S. Long Distance, Inc. in CC Docket 92-77

Dear Ms. Searcy:

Enclosed please find an original and nine (9) copies of the above referenced Comments submitted pursuant to Order FCC 92-465, adopted October 8, 1992 in CC Docket 92-77.

Any questions may be directed to the undersigned. Your courtesies are greatly appreciated.

Sincerely,

Kenneth F. Melley, Jr.
Director of Regulatory Affairs

Enclosures

cc: Tariff Division
Common Carrier Bureau
Room 518
1919 M Street, N.W.
Washington, D.C. 20554

Downtown Copy Center
Suite 640
1990 M Street, N.W.
Washington, D.C. 20554

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Corporate Offices
9311 San Pedro, Suite 300, San Antonio, Texas 78216
(512) 525-9009 Fax (512) 342-4030

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
FILE

In the Matter of	)	
	)	
Billed Party Preference	)	CC Docket 92-77
for 0+ InterLATA Calls	)	Phase I

COMMENTS OF U.S. LONG DISTANCE, INC.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

W. Audie Long, Esq.
Kenneth F. Melley, Jr.
9311 San Pedro,
Suite 300
San Antonio, TX
78216

December 14, 1992

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SUMMARY

In February 1991, American Telephone and Telegraph Company (AT&T) began issuing proprietary calling cards to millions of unsolicited LEC joint use calling cardholders. This new AT&T card utilized proprietary account numbering such that, unlike the LEC card, it was unusable as a 0+ billing mechanism on other OSP networks, and therefore diminished the LEC cardholder's ability to place 0+ calls from other than AT&T presubscribed telephones. Dialing instructions and accompanying marketing material were deceptive to such an extent that the Commission issued a Letter of Admonishment to AT&T and adopted various exclusive requirements to be imposed upon AT&T, such that AT&T was required to re-educate these LEC card customers about the true merits and limitations of AT&T's proprietary card.

In that same proceeding, the Commission denied three viable alternatives proposed by the OSP industry which were designed to counteract the anti-competitive impact that AT&T's new card had exacted upon AT&T's competitors. The Commission did, however, request comment on the merits and technical ramifications of possible compensation mechanisms under which AT&T would be required to reimburse OSPs for the increase in their respective unbillable network usage directly attributable to AT&T's CIID card campaign.

U.S. Long Distance, Inc. ("USLD") herein asserts that compensation is justified and would best serve the interests of the public if such compensation were imposed each time an AT&T CIID cardholder, because of the unclear or misleading information associated with the card, accessed a non-AT&T OSP's network. The Commission has established precedence which justifies this compensation in CC Docket 91-35. Under its proposal, USLD describes how expanded network investment would not be required as the technical means for effectively transferring AT&T CIID cardholders exists today.

USLD proposes that compensation be subject to contractual arrangements between CIID card issuing IXCs and OSPs but that participation in such contract offering

must be mandatory for these IXCs. CIID card issuers are free to educate their cardholders in such a manner that no OSP compensation would be necessary, but OSPs are bound by the regulations governing call blocking and the lack of regulations requiring the sharing of calling card databases associated with "0+" type calling cards such that OSPs cannot thwart or in any way prevent misdirected CIID cardholders from accessing their network on a 0+ basis.

USLD shows that, in relation to its proposal, effective transfer services can be provided by OSPs for 0+ CIID card calls without compromising the anti-splashing requirements of TOCSIA.

USLD describes the relative value of each incidence of effective CIID card caller transfer in terms of the value to the CIID card issuer of an educated cardholder. Furthermore, USLD specifies the unique anti-competitive advantages afforded to AT&T in aggregator presubscription related to its CIID card and the associated commissionable call attempts and asserts that an additional component of OSP compensation must be representative of the level of commission an aggregator would have received had that same call been completed by AT&T on a presubscribed basis.

USLD estimates that the justifiable level of OSP compensation for the effective transfer of 0+ CIID card call attempts is $1.25 per attempt.

USLD acknowledges the need for accurate compensation accounting such that AT&T is not exposed to inaccurate reporting of CIID card 0+ call attempts. USLD believes that AT&T will have sufficient information about each OSP call attempt such that it may compare this data with that of its own and determine the integrity of the call records presented for billing by OSPs, subject to agreement on acceptable levels of subsequent anticipated busy or unanswered CIID card calls.

USLD concludes that expeditious action by the Commission is required in implementing the OSP compensation mechanism. The Commission is implored to recognize that OSPs have endured these network expenses and virtually performed the education of AT&T's CIID cardholders as required in the Commission's Letter of Admonishment to AT&T since February 1991 without receiving any form of compensation. In the interest of the manifestation of a more competitive OSP marketplace, these remedies are essential and long overdue.

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Washington, D.C. 20554

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In the Matter of	)	
	)	
Billed Party Preference	)	CC Docket 92-77
for 0+ InterLATA Calls	)	Phase I

COMMENTS OF U.S. LONG DISTANCE, INC.

U.S. Long Distance, Inc. ("USLD") hereby submits its comments on the methods for compensating operator service providers who continue to receive 0+ dialed proprietary card calls and who wish to transfer those calls to the card issuer for completion, as described in the Report and Order and Request for Supplemental Comment adopted by the Federal Communications Commission (the "Commission") on October 8, 1992 in CC Docket No. 92-77 (the "Request for Supplemental Comment.")

INTRODUCTION

In February 1991, American Telephone and Telegraph Company (AT&T) began issuing proprietary calling cards to millions of unsolicited holders of LEC joint use calling cards. These new cards utilize account numbering in the Card Issuer Identifier ("CIID") format. [1] Dialing instructions and accompanying marketing material deceptively caused LEC joint use cardholders to effectively discard their LEC joint use calling cards, which are an acceptable billing mechanism for completing calls over competitive operator service provider ("OSP") networks,[2] and thereby eliminated those cardholders' ability to complete 0+ calling card calls using telephones presubscribed to non-AT&T networks.

On December 20, 1991, the Competitive Telecommunications Association ("CompTel") filed an Emergency Motion for an Interim Order Requiring AT&T to Cease Further Distribution of "Proprietary" CIID Cards and Permit Validation and Billing of

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1 See Request for Supplemental Comment at 4.

2 "Competitive Operator Service Provider" refers to all operator service providers except AT&T, and LEC joint use cards are made available as billing mechanisms to all such providers through contractual arrangements between the LECs and OSPs or their billing intermediaries.

Existing Cards Pending a Final Decision in this Docket ("Emergency Motion"), which described the deceiving information being distributed in conjunction with AT&T's CIID card and the subsequent injurious effect this information had engendered upon OSPs whose networks became inundated with callers attempting unbillable 0+ calls per AT&T's CIID card dialing instructions. On April 9, 1992, the Commission adopted a Notice of Proposed Rulemaking [3] to examine the merits of the implementation of a Billed Party Preference ("BPP") system which, theoretically, might circumvent the need for the Commission's intervention into the matter of the AT&T CIID card. Participants in this proceeding, including AT&T, RBOCs, IXCs, OSPs, aggregator associations and telecommunications equipment vendors, clearly identified serious technical impediments to the implementation of BPP during comments and reply comments, including cost estimates of over $1 billion and lack of network availability until mid 1996 at the earliest. Finally, on October 8, 1992, the Commission released the Request for Supplemental Comment, which encompassed the denial of the aforementioned Emergency Motion,[4] rejection of the proposed interim 0+ public domain remedy,[5] and the rejection of the proposal to allow OSPs access to billing information for CIID card calls contingent upon OSPs assessing CIID card issuing IXC rates on any such CIID card call. [6] The Commission instead seeks comment on (1) the interconnection arrangements needed to provide transfer service for CIID calls, (2) whether compensation for such arrangements should be subject to tariff, contract or compensation mechanism regulations, and (3) how transfer service can be provided in a manner consistent with the non-splashing requirements of the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA").

USLD herein responds to the Commission's requests and offers a fair and pro-consumer solution to the confusion and inequities created by AT&T through the

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3 CC Docket 92-77, Billed Party Preference for 0+ InterLATA Calls, adopted April 9, 1992.
4 Request for Supplemental Comment at 69.
5 Id. at 44.
6 Id. at 62.

marketing and issuance of its proprietary CIID calling card. USLD further implores the Commission to act immediately upon the implementation of its proposal in order to arrest the financial distress that has unfairly burdened the OSP industry for nearly two years.

I. INTERCONNECTION ARRANGEMENTS NEEDED TO PROVIDE TRANSFER SERVICE

Undoubtedly this proceeding will engender proposals for the establishment of network configurations such that OSPs, in order to partake in compensation for misdirected calls accessing their networks, must establish facilities which directly connect their respective switching equipment to the Points of Presence ("POPs") of every CIID card issuing interexchange carrier ("IXC") whose callers have been inadequately educated as to proper use of such card. USLD would participate in such an arrangement provided it were guaranteed return on its investment, as are LECs when performing similar transfers. However, USLD recognizes that such proposals necessitate recovery of the costs of trunking, standardization of signaling protocol and expansion of transmission facilities, [7] which appear on the surface to be translatable into an ever increasing per call charge, as the mandated AT&T reeducation process diminishes the number of CIID card calls entering an OSP network. Administration of continual rate setting, be it tariffed or contractual, would further lead toward a cost-per-call-transferred that may potentially approach or even exceed the collective benefits to the consumer, AT&T and OSPs.

Ideally, the effective transfer of a CIID card caller from an OSP network to the network of the CIID card issuer should be made without requisite network investment. Indeed, the consumer in general will benefit most when the CIID card caller can access a CIID card issuer's network without incurring the incremental costs of transmission facilities specifically constructed for such transfer. USLD argues that existing network

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7 As an example, if an OSP currently experiences 35% incidence of AT&T CIID card calls in relation to its total call attempts, it would be required to expand its traffic capacity by a similar degree under this proposal since it would now be carrying the originating portion of the CIID card call.

can be utilized by the CIID card caller, given the benefit of accurate dialing instructions from the OSP operator, thus accomplishing the effective transfer of the CIID card caller to the CIID card issuer's network, while avoiding network configuration costs entirely. In this manner, only thoses costs involved with accessing the OSP network and receiving appropriate instructions are imposed upon the consumer. These costs are borne today by OSPs without any means for compensation.

The Commission has established precedent for the compensation of expenses incurred in processing 0+ calls to other than presubscribed OSPs. In its proceeding entitled Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, the Commission states:

> "The Operator Service Act and our rules require that pay phone owners allow consumers to use pay phone equipment for access code calls . . . It is only fair that theses costs [incurred by pay phone owners by providing such access] be shared by consumers who benefit from the ability to make access code calls and by OSPs who derive revenue from these calls." [8]

In its Request for Supplemental Comment, the Commission failed to adopt proposed measures that would require CIID card issuers to ". . . either establish and use access codes for proprietary cards, or use 0+ access and open the card validation and billing database to all other IXCs." [9] Furthermore, the Commission denied the Emergency Motion to allow OSPs access to the validation and billing information associated with AT&T's CIID card. These actions, coupled with the Commission's rejection of the proposed interim 0+ public domain remedy, effectively require OSPs to allow consumers to continue to access their networks and attempt to place calls using unbillable calling cards. Thus, in keeping with Commission precedent as established in CC Docket 91-35, it is then only fair that the costs such callers impose upon OSPs in return for their becoming

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8 CC Docket 91-35, Report and Order and Further Notice of Proposed Rulemaking, adopted July 11, 1991, at 34.

9 Request for Supplemental Comment at 26.

educated as to appropriate CIID card dialing procedures must be shared by consumers who benefit from their education and by the OSP who ultimately derives revenue from these callers.

It therefore follows that OSPs are entitled to compensation in each incidence they receive a CIID card call attempt and effectively transfer such call by providing the caller with accurate instructions for directly accessing the CIID card issuer. Regardless of the events following a CIID card caller's seizure of an OSP network, precedent has been established that requires that OSPs receive compensation for each incidence a CIID cardholder improperly accesses their network.

II. SHOULD TRANSFER SERVICE BE PROVIDED BY TARIFF, CONTRACT OR COMPENSATION MECHANISM

In its proceeding regarding the adoption of appropriate pay phone compensation for access code dialing, the Commission concluded that the administrative costs associated with maintaining tariffs for each pay phone owner governing the terms and rates of its compensation were in and of itself burdensome enough to forego adoption of such a requirement. There is no evidence that, given the similarities between pay phone compensation and OSP compensation proposals, the Commission will reach a contrary conclusion.

Furthermore, proposals to require that compensation to OSPs by CIID card issuing IXCs be subject to contractual arrangements between these parties implies an element of negotiability on behalf of both parties. Let the record clearly show that OSPs are required to permit access to their network in such a way that it cannot control the incidence of unbillable CIID card calls from entering their network, and OSPs therefore are not free to eliminate, restrict or impair such incidence in the event favorable contract terms are not made available by a CIID card issuing IXC. Thus no incentive exists for such IXC to offer equitable terms of compensation, or to pay compensation whatsoever.

Furthermore, CIID card issuing IXCs are entirely unrestricted as to the methods they elect to utilize in providing their customers with dialing instructions. It follows that the incidence of inaccurate dialing procedures commited by a CIID card issuing IXC's customer base is directly related to that IXC's education campaign. Mandatory CIID card IXC participation in OSP compensation contracts could be a moot point if the IXC educates its own customers properly. Therefore, clearly, compensation contracts as contemplated in this Request for Supplemental Comment cannot be subject to discretionary participation by CIID card issuing IXCs.

III. HOW CAN TRANSFER SERVICE BE PROVIDED CONSISTENT WITH THE ANTI-SPLASHING PROVISIONS OF TOCSIA

As a technical matter, modern signaling protocol permits the delivery of the necessary origination information in a transfer between OSP and CIID card issuing IXC POPs such that each resulting call record can contain the information necessary for the correct identification of origination location in subsequent end-user billing. When considering this proposal more closely, however, two problems arise.

Modern signaling protocol is not universally implemented throughout the OSP and IXC industries. Therefore, certain OSPs and certain IXCs would be precluded from participation in any such CIID card transfer proposal. USLD believes this inconsistency may lead to end-user confusion and impose inequitable competitive impediments to smaller, less capital intensive OSPs.

Secondly, delivery of subscriber ANI information to CIID card issuing IXCs imposes unacceptable competitive vulnerability upon those OSPs participating in such transfer arrangements. CIID card issuing IXCs would be able to accumulate call data information regarding specific OSP subscribers, which would allow them to approach such customers with the benefit of competitively sensitive call data information that would otherwise not be available.

However, once a CIID cardholder receives dialing instruction from the presubscribed OSP operator, thus effectively transferring the caller to the CIID card issuing IXC network, the ensuing IXC call record will contain the same information these IXCs use today in billing 10XXX, 1-800 or 950 calls, which have not been identified to be in violation of the anti-splashing provisions of TOCSIA. Furthermore, all OSPs and CIID card issuing IXCs can participate in this arrangement, and competitively sensitive information that is today not available to CIID card issuing IXCs will remain uncompromised.

IV. AT&T CIID CARDHOLDER EDUCATION AND OSP COMPENSATION

Transfer service as contemplated in this proceeding is intended to correct any inadequacies in a CIID card issuing IXC's cardholder education campaign. Only one such IXC, AT&T, has been identified, indeed admonished, by the Commission as having failed its obligation to properly educate its cardholders. USLD confines its remaining comments to the practices and accountability of AT&T in regard to OSP compensation for the effective transfer of CIID card callers.

The extent of AT&T's misinformation campaign is documented by the Commission's Letter of Admonishment, in which the Commission directly states, "We expect AT&T to take remedial steps to assure that persons who may have been misled by its prior marketing action promptly receive correct information regarding the validity and use of existing calling cards, whether issued by AT&T individually or in shared use with the BOCs." [10]

Therefore, the Commission has explicitly directed AT&T to bear the costs of the necessary corrective educational measures required to prevent its CIID cardholders from accessing other OSP networks on a 0+ basis. Each CIID card caller that accesses a competitive OSP network represents an incidence of AT&T's failure to comply with the

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10 Commission's Letter of Admonishment to AT&T, page 4.

Commission's explicit directions. Such failure is attributed solely to AT&T's avoidance of its financial responsibility to appropriately educate its customer. OSP operators have unwillingly become the surrogate educators of these CIID cardholders since February 1991, instructing these callers to hang up and dial AT&T's access code, while the OSP incurs the cost of network usage required to handle the call and educate the AT&T customer. These costs, incurred in the education of AT&T's CIID cardholder, are those which have been specifically obligated upon AT&T by the Commission's Letter of Admonishment. Therefore, one element of the contemplated level of compensation must reflect the relative value to AT&T of an educated CIID cardholder, one who will from that moment be more inclined to access AT&T directly.

Secondary compensation must be prescribed as a means of preventing an undue increase in the competitive leverage of AT&T as a result of regulatory policies. Particularly in the hospitality industry, where today no "dial around" compensation mechanism has been prescribed, non-AT&T aggregators will witness (and have witnessed since February 1991) a decrease in commissionable long distance traffic due to the successful education of AT&T's CIID cardholders, as 0+ calls are diverted from the presubscribed OSP because of the non-billable aspect of the calling card. OSPs today can respond to such aggregators' worries either by increasing the amount of commissions paid on those remaining billable 0+ calls, or as AT&T has held, by issuing a CIID card of their own.

USLD states that neither of these alternatives is in the public interest. Increase in commissions paid necessitates an increase in end user charges, thus effectively charging 0+ callers for their use of the aggregators' telephone as well as a portion of those charges resulting from the CIID card callers' use of the same telephone. On the issue of OSPs' issuance of their own CIID card, this industry must acknowledge the fact that, due to AT&T's 100-year history, its domination of every aspect of interexchange telecommunications, and its vast, unparalleled resources, CIID cards simply are not a competitive product. As evidence to this fact, the Commission must consider that no other IXC has implemented a calling card in the same format. This is because all other IXCs combined represent less than one half of the presubscriptions of publicly available telephones compared with those presubscribed to AT&T. [11] Therefore, it is impractical and implausible for these IXCs to issue a card which is unbillable on a 0+ basis from telephones presubscribed to other OSPs. This situation will never change. In fact, if AT&T's market share of presubscribed public telephones were ever to decline to 50%, USLD speculates that AT&T would revise or withdraw this calling card from the market. Cardholders would not tolerate such incidence of failed 0+ call attempts. It is imperative that the Commission recognize that the CIID card, in conjunction with pre-existent OSP market dominance, is anti-competitive and adverse to the objectives of the Commission.

Thus, since the CIID card is truly an anti-competitive marketing implement, the Commission cannot support a decision which would allow AT&T to utilize the card's competitive leverage as a revenue generating mechanism for aggregators presubscribed to AT&T's network, and a revenue depleting mechanism for those aggregators presubscribed to AT&T's competitors. USLD states the OSP compensation for the education of AT&T's CIID cardholders must be supplemented by additional compensation earmarked for the compensation to the OSP's aggregator customer. Without such compensation, the economic pressure for all aggregators to presubscribe their telephones to the network which can provide them revenue for CIID card calls along with all other types of 0+ calls will decimate the industry.

V. LEVEL OF COMPENSATION

USLD has shown that the level of compensation for OSPs with respect to CIID card calls must include two elements: compensation for the value to AT&T of an educated

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11 See Request for Supplemental Comment at 14. "According to AT&T, only 68 percent of public phone lines are presubscribed to AT&T..."

CIID cardholder, and compensation designed to counteract the anti-competitive disincentive for the aggregator to abandon its non-AT&T OSP.

AT&T has invested in commercial advertisements over the last two years which have been targeted at AT&T customers who use public telephones. These advertisements, deceptive though they may be, can be seen and heard on all major television networks, in magazine advertisements, on the radio, and even during in-flight video programs on commercial airplanes. If one could ascertain AT&T's total investment in these advertising campaigns and divide that sum by the number of CIID cardholders, one would derive the empirical value to AT&T of end-user education. Without the benefit of this actual dollar value, USLD does not believe it to be unreasonable to estimate that it is in the tens of millions of dollars. With 25 million CIID cards issued, for the purposes of this estimate, USLD speculates that the total advertising budget expended to date could be in the range of $25 million. Thus, a benchmark for this value per cardholder to AT&T could be estimated at $1.

AT&T's reported average per-call commission paid to aggregators is $0.25. [12] If the aggregator is compensated through its non-AT&T presubscribed OSP for a CIID cardholder's call by an amount equivalent to that of AT&T's presubscribed aggregators, the non-AT&T aggregator is less exposed to the anti-competitive compulsion to change service providers merely to capture revenue which is associated with an AT&T 0+ CIID card call.

Therefore, USLD, assuming its estimates are reasonable, calculates an equitable per-call compensation level of $1.25 per incidence of AT&T CIID cardholder effective transfer.

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12 According to USLD's available marketing statistics.

VI. COMPENSATION ACCOUNTING

USLD recognizes that certain safeguards should be established to ensure that AT&T is subjected to compensation for only those calls in which cardholder education is performed. USLD acknowledges that perhaps the best method by which AT&T could verify the integrity of an OSP's reported incidence of CIID cardholder education is to compare the records of such call attempts on OSP networks with the subsequent incidence of cardholder access via 10288-0 or AT&T's newly enhanced 1-800 number. Under such a proposal, OSPs would present to AT&T a billable call attempt record that would include the CIID card number and time and date of the call attempt. Thus, AT&T could review its CIID card call record data in order to find a "match," or a call shortly after the call attempt over the OSP network which is billed to the same CIID card account number. AT&T would have to allow for incidence of busy or unanswered calls. AT&T and OSPs could reach a consensus as to the reasonable incidence of completed versus attempted call, and AT&T could hold individual OSPs to the same approximate percentage. In this manner, AT&T could be assured that it compensates OSPs only to the level commensurate with the respective OSP's actual transfer services.

CONCLUSION

USLD reiterates its position that compensation, as contemplated in this proceeding, is required for the effective transfer of the CIID cardholder, in keeping with the precedence established for compensation in CC Docket 91-35. Furthermore, USLD states that an effective transfer is defined as each incidence an OSP operator provides the CIID cardholder with accurate dialing instructions. Performance of this education by OSPs constitutes the action which was mandated by the Commission upon AT&T in the Request for Supplemental Comment. In each such incidence of CIID cardholder education today, OSPs alleviate AT&T of its financial obligation set forth therein. USLD believes that the equitable level of compensation, while taking into account certain estimates, is $1.25 per call attempt. Finally, USLD believes that adequate measures can be taken by AT&T to ensure that compensation reporting is accurate.

USLD urges the Commission to act immediately upon implementing this compensation mechanism, as the livelihood of many OSPs remains in peril. In light of the Commission's previous decisions in this proceeding, specifically those pertaining to the rejection of 0+ public domain and the Cleartel/Com Systems proposal, obligate it to take action to resolve the competitive inequities brought about by AT&T's introduction of the CIID calling card.

Respectfully submitted,

W. Audie Long, Esq.
Kenneth F. Melley, Jr.
U.S. Long Distance, Inc.
9311 San Pedro, Suite 300
San Antonio, TX 78216

December 14, 1992